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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

DATE: DEC 31 1987

SUBJECT: Request for Administrator to Initiate Review of  
PSD permit for Camden County Resource Recovery Facility

FROM: Christopher J. Daggett  
Regional Administrator

TO: Lee M. Thomas  
Administrator

I am requesting that, pursuant to 40 C.F.R. 124.19, you review the PSD portion of the air pollution permit issued to Camden County Energy Recovery Associates for construction of the Camden County Resource Recovery Facility in Camden, New Jersey (CCRRF). The failure of the New Jersey State Department of Environmental Protection (DEP) to include an emission limit for PM10 in the permit, to address BACT adequately for PM10 and to provide for public comment on PM10 as a PSD affected pollutant are grounds for reviewing the DEP's actions in issuing the permit and for staying the effectiveness of the permit until all PSD requirements have been met. As explained below, if you agree that review of this permit is appropriate, you will have to notify the permittee by January 11, 1988, that you are initiating review of the PSD portion of the permit.

This permit was issued under various authorities including EPA's PSD permit authority, 40 C.F.R. 52.21, which is delegated to DEP. Due to the promulgation of the new NAAQS for PM10 on July 1, 1987, the emissions of particulate matter from the CCRRF became subject to the PSD rules. Particulate matter was not previously subject to PSD because the area was classified as nonattainment for the now withdrawn NAAQS for total suspended particulate (TSP). My staff has concluded that the permit and the permit review procedures do not adequately address PM10 under the applicable PSD regulations.

DEP was aware several months before it issued the permit that the new PM10 NAAQS for particulate matter would require PSD review. Nevertheless, the permit does not include an emission limitation for particulate matter expressed as PM10 emissions from the facility. Also, the analysis of the control technology fails to demonstrate that the system selected would provide the best degree of emission control currently available for PM10 particulates. Finally, there is a procedural problem with the permit as well. DEP did not provide notice and an opportunity for the public to comment on the PM10 aspect of the permit, contrary to the regulatory requirements and the express advice of Region II.

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The Delegation of PSD Authority to DEP

EPA Region II delegated PSD new source review authority to DEP pursuant to 40 C.F.R. 52.21(u). The PSD permitting authority delegated to the DEP is not restricted in any way. The delegation is general in nature and includes all PSD requirements as they are from time to time revised by rulemaking.

#### Applicability of PM10 Requirements to CCRRF permit

The application for the CCRRF air pollution control permit was submitted on April 30, 1986. The DEP required the application to be augmented until the application was considered complete and the DEP noticed the permits for public comment on April 28, 1987. & public hearing was held on May 28, 1987, in Camden, New Jersey, and the public comment period ended on June 12, 1987.

PSD requirements are applicable to this permit for particulate matter because it is not in the class of permits and permit applications that are covered by the grandfathering exemptions of the PM10 promulgation. No PSD application addressing particulate matter was submitted for the CCRRF before July 31, 1987. At the time of the notice period, the facility was required to undergo preconstruction review under the SIP for TSP because the area was nonattainment (secondary) for TSP but Federal and State permits were not issued until December 7, 1987. Only sources with PSD applications for particulate matter or with all Federal and State preconstruction approvals or permits before July 31, 1987, are exempt from PSD review for PM10. See, 40 C.F.R. 52.21(c)(4)(ix) and (x) (52 Fed. Reg. 24714, July 1, 1987).

We reminded the DEP, both orally and in writing, of the need to satisfy the PSD requirements at 40 C.F.R. 52.21 for sources of particulate matter as a result of the PM10 promulgation. The DEP was informed that the CCRRF gas was not grandfathered and required additional PSD review to account for PM10.

#### BACT Emission Limit Necessary for PM10

The permit has no emission limitation for PM10. BACT is, by definition, an emissions limitation rather than merely specified types of equipment. 40 C.F.R. 52.21(b) (12). (The only exception is when there are technological or economic limitations on the application of measurement methodology.) Clearly the grandfathering provisions were meant to limit the class of major net sources for which the particulate emission limit is expressed

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as TSP under the Clean Air Act. Without an express limit on PM10 as a permit condition, we are concerned that there will be no sufficiently stringent, enforceable limit on particulate matter for this facility.

Even if the difference between the actual rate of particulate matter emissions smaller than 10 microns in size occurring as a result of the TSP limit now in the permit and the PM10 limit that should be in the permit proves to be small or nonexistent, failing to correct this permit will leave a muddled and uncertain basis for future enforcement. EPA regulations clearly require that particulate matter emissions be addressed under the PSD regulations for this permit and that an emission limit be expressed in terms of PM10. Region II is concerned that a TSP emission limit in an instance where PM10 was the PSD regulated pollutant may be unenforceable especially in light of EPA's conclusion that the NAAQS which triggers PSD for particulate matter in the case of CCRRF's permit is the new PM10 NAAQS, See, 52 Fed. Reg. 24694.

#### The State BACT Analysis

The DEP's Hearing Officer found that there is no predictable difference between a baghouse and an electrostatic precipitator (ESP) with respect to PM10 collection efficiency and, therefore, concluded that the ESP determined adequate for TSP is also adequate as BACT for PM10. Region II considers the BACT analysis by which the DEP reached its conclusion to be unacceptably thin in its review of available data. The only analysis which appears to be available is in a report submitted by letter from the permittee dated November 16, 1987, responding to a November 2, 1987, request from DEP.

Our review of the BACT analysis shows that it is incomplete and an inadequate basis for making necessary technical judgments. Some questions are so fundamental that we cannot make meaningful technical comments. For

example:

1. What are the sources of the engineering and economic data?
2. Why is there no comparison of the particulate size and garbage characteristics at the cited facilities and what is anticipated at CCRRF?
3. What were the test methods employed in obtaining the emissions data from the cited facilities?
4. Why were three United States facilities referenced but not considered in the analysis?

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5. Was the removal efficiency data based on a system comparable to CCRRF's which includes a dry scrubber before the electrostatic precipitator or baghouse?

These are just some of the questions that we have and which we would normally review with a PSD permit applicant before public comments are solicited. With the date of the submission being November 16, 1987, and the permit issuance date being December 7, 1987, we do not believe that any meaningful questioning of the permittee's analysis was done by the DEP. The mere three weeks between the submission of the report and permit issuance did not allow the Region a meaningful opportunity to resolve EPA concerns.

#### Public Comment on PM10 PSD Review

In early November, 1987, DEP informed Region II that it had completed the necessary PSD analysis for PM10 but needed to issue the permit with little or no time for a public comment period with respect to PM10 because of an impending financing deadline. On the basis of DEP assurances that PM10 had been adequately addressed, Region II staff suggested to DEP staff that DEP might be able to justify a shortened public comment period, but emphasized that an opportunity for public comment to review the PM10 analysis was necessary. (EPA's OGC and OAQPS orally concurred with Region II's position.) DEP acknowledged the need for public comment and agreed to follow appropriate, but shortened, procedures. Region II received a copy of and began to review the permittee's November 16, 1987, submission. With no notice for public comment and no further notice to EPA, DEP issued the air permits to CCRRF along with SPDES and solid waste permits on December 7, 1987.

Region II's advice with respect to the comment period assumed adequate treatment of PM10 under PSD requirements. Having subsequently reviewed the BACT analysis and the permit itself, we now believe that these do not meet the requirements of PSD and any reason to allow less than 30 days for public comment on the PM10 analysis would be unjustified.

#### Recommendation

I am asking that you initiate review of the CRRF permit with respect to compliance with PSD review procedures applicable to PM10. Specifically, the review should address:

1. The failure to include BACT expressed as a PM10 emission limit in the permit.

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2. The adequacy of the review of available technology in establishing BACT.

3. The failure to provide for public comment regarding the PM10 limitations.

A December 1, 1987, memorandum from Craig Potter, Assistant Administrator for Air and Radiation, calls for regional offices to monitor state

compliance with preconstruction reviews to prevent instances such as this. We have done so in this case but were not consulted by the DEP when it decided to reject EPA's direction and issue the permit. We expect that the DEP and the permittee will correct this action rather than go through the entire review process but the issuance of the permit leaves us with no choice but to seek to commence review to prevent the action taken by DEP from becoming final action.

We are prepared to continue working with the DEP to act on the permit expeditiously should the DEP and the permittee agree to remedy the deficiencies discussed above. We have also explained to the DEP that, if appropriate, Region II could request a stay of EPA's permit review proceedings in the interim. In this regard, the DEP has contacted Region II and is exploring ways to take valid legal action on their own which would eliminate the need for you to act on this request for review by January 11. If the DEP should take such action, we will notify you immediately. I request that you alert me before you issue an order under Section 124.19(c).

#### Procedures and Time Limitations

We are concerned that review procedures be initiated within the time period allowed by the regulations, 40 C.F.R. Part 124, so that we are not foreclosed from raising these important issues. Under Section 124.19(a), if this is construed as a petition for review, the petition must be filed within 30 days of service of the notice by the DEP of its final permit decision and the Administrator must issue an order granting the review within a reasonable time. Section 124.19(c). If for any reason you determine that Section 124.19(a) is not the proper procedure, we would request you to initiate review on your own initiative under Section 124.19(b), which appears to require you to act within the initial 30 days.

Based on the issuance of the permit on December 7, 1987, we calculate that the 30 day period from the issuance of the permit will end on January 11, 1988. Pursuant to Section 124.20(a), the time began to run on the day after permit issuance. Since service of the DEP notice was by mail, we have added three days to the prescribed time in accordance with Section 124.20(d). The thirty-third day after December 7, 1987, is January 9, 1988, which is a Saturday, and Section 124.20(c) provides that the time period is extended to the next working day which is Monday, January 11, 1988. If this is construed as a review on your

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own initiative, notice must be given by this date and we recommend that notice granting review in either case be provided by January 11, 1988.

The regional office filed comments on the draft permit within the DEP's public comment period. See, Hearing Officer's Report, December 7, 1987, Appendix B. We construe the definition of person in Section 124.41 to include an EPA regional office. Therefore the Region, as a person who filed comments, is a proper party to file a petition for review under Section 124.19(a).

By whichever means review is initiated, the review procedure is intended to prevent raising facts or issues on appeal that were not raised in the public comment period. See, 45 Fed. Reg. 33411, Col. 3 (May 19, 1980). Section 124.19(a) requires a statement that the issues being raised for review were raised during the comment period to the extent required by Part 124. A person's obligation is to "raise all reasonably ascertainable issues and submit all reasonably available arguments by the close of the public comment period." Section 124.13. The issues raised herein were not required to be raised earlier since these issues could not have been known at the time the comment period closed on June 12, 1987. Indeed, we had advised the DEP that a public comment period should be provided so that public comments could be received on the PM10 permit decision.

Notice of the initiation of the review procedures should be sent to:

Mr. Robert Donahue  
President  
Camden County Energy Recovery Associates

110 South Orange Avenue  
Livingston, New Jersey 07039

Mr. Richard T. Dewling  
Commissioner  
New Jersey State Department of  
Environmental Protection  
401 East State Street  
CN-027  
Trenton, New Jersey 08625

Mr. Gary Pierce  
Chief  
Bureau of Engineering and  
Regulatory Development  
Division of Environmental Quality  
New Jersey State Department of  
Environmental Protection  
401 East State Street  
CN-027  
Trenton, New, Jersey 08625

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Enclosed are copies of the following documents upon which this request is based:

1. PERMIT TO CONSTRUCT, INSTALL, OR ALTER CONTROL APPARATUS OR EQUIPMENT AND TEMPORARY CERTIFICATE TO OPERATE CONTROL APPARATUS OR EQUIPMENT AND PREVENTION OF SIGNIFICANT DETERIORATION PERMIT  
December 7, 1987
2. HEARING OFFICER'S REPORT FOR THE APPLICATION BY CAMDEN COUNTY ENERGY RECOVERY ASSOCIATES TO CONSTRUCT AND OPERATE A SOLID WASTE RESOURCE RECOVERY FACILITY  
December 7, 1987
3. Letter from Robert F. Donahue, President, Camden County Energy Recovery Associates to Jorge H. Berkowitz, New Jersey State Department of Environmental Protection, Subject: Camden County Resource Recovery Facility PM10 BACT Analysis, with enclosure  
November 16, 1987

Enclosures (3)

cc: Thomas L. Adams, LE-133  
Francis S. Blake, LE-130  
J. Craig Potter, ANR-443  
Ronald L. McCallum, A-101